

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

Gerald Colpitts, as Personal Representative)
of the Estate of Bernadette Muratore,) Case No.: **6:20-cv-04065-DCC**
)
)
Plaintiff,)
)
JOINT STATUS REPORT
)
v.)
)
)
NHC Healthcare Clinton, LLC and Charles)
Holder, individually and in his capacity as)
Administrator of NHC Healthcare Clinton,)
LLC)
)
)
Defendants.)
)

Pursuant to the Court's Text Order dated January 25, 2023, the parties submit the following Joint Status Report.

STATUS OF THE LITIGATION

Plaintiff filed his Original Summons and Complaint (ECF #1-1) in the Circuit Court of the State of South Carolina for Laurens County on October 19, 2020. NHC Clinton, the lone defendant at the time, was served with the Summons and Complaint on October 27, 2020. NHC Clinton timely filed its Notice of Removal (ECF #1) as required by 28 U.S.C. § 1446(b).

Contemporaneous with the filing of the Notice of Removal, NHC Clinton filed a Motion to Dismiss and Supporting Memorandum (ECF #2 and #2-1) on the grounds Plaintiff's claims were preempted by, and NHC Clinton has immunity through, the PREP Act. Plaintiff filed his Response to NHC Clinton's Motion to Dismiss (ECF #3) on December 4, 2020.

Plaintiff filed an Amended Summons and Complaint (ECF #4) adding NHC Clinton's Administrator Charles Holder as a defendant. This Court issued a text order on December 11, 2020 (ECF #5) finding as moot NHC Clinton's Motion to Dismiss based on the filing of the

Amended Complaint. Defendants moved to Dismiss the Amended Complaint (ECF #7) and to Deny Joinder of Charles Holder (ECF #6).

On July 1, 2021, the Court issued its Order on Defendants' Motion to Dismiss and Motion to Deny Joinder. The Court denied Defendants' Motion to Dismiss finding the PREP Act was not implicated by the allegations in the Complaint. The Court further found the PREP Act is not a complete preemption statute and, thus, does not in and of itself establish federal question jurisdiction. The Court also denied Defendants' Motion to Deny Joinder as premature, without prejudice, and with the right to refile because the joinder of Defendant Holder at present would not destroy subject matter jurisdiction. This is because Defendants also asserted Federal Officer Removal Jurisdiction.

The Court requested the parties provide supplemental memoranda regarding Defendants' Federal Officer Removal Jurisdiction assertion, and the parties briefed the issue. To date, no ruling has been issued. Defendants have been granted an extension to file a responsive pleading until 14 days from the date the Court issues an order (ECF #33). In the event the Court does not find Federal Officer Removal Jurisdiction, Defendants will likely refile the Motion to Deny Joinder.

The parties have not engaged in discovery, pending the outcome of the jurisdictional issue and the later determination of arbitrability.

MEDIATION AND/OR ARBITRATION

Plaintiff's counsel has made a preliminary inquiry as to resolving the matter. Defendants are considering their response.

Defendants have reserved the right to seek enforcement of a Voluntary Agreement to Arbitrate and Waive Jury Trial signed by Sandy Cobb, daughter of Decedent, which subjects all

claims between the parties arising out of or in any way related or connected to Decedent's stay and the care provided to binding arbitration.

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February 23, 2023